

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT L. TALLEY and DEPARTMENT OF THE ARMY,  
Fort Benning, GA

*Docket No. 00-1624; Submitted on the Record;  
Issued March 26, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury causally related to factors of his employment.

On June 13, 1999 appellant, then a 62-year-old forklift operator, filed a notice of occupational disease alleging that years of reaching over his shoulder caused severe pain throughout his left arm and shoulder. In an undated statement, appellant stated that as part of his job he constantly reached above his shoulders to maintain the stock on shelves.

In support of his claim, appellant submitted employment records including a job description, an operative report dated January 9, 1996 pertaining to a right rotator cuff repair with acromioplasty and acromioclavicular joint arthroplasty performed by Dr. George McCluskey, a Board-certified orthopedic surgeon; hospital instructions dated June 18, 1999, in which Dr. McCluskey noted appellant's diagnosis of the left upper extremity as "rule out rotator cuff tear"; and an undated form report which set forth appellant's work restrictions.

By letter dated September 10, 1999, the Office of Workers' Compensation Programs requested additional information including a physician's opinion supported by a medical explanation of the relationship between appellant's condition and his employment. Appellant was given 30 days to respond.

In a decision dated October 15, 1999, the Office denied appellant's claim on the grounds that he did not establish fact of injury. The Office found that appellant did not submit evidence to establish that a medical condition had been diagnosed in connection with appellant's employment.

In an undated letter, appellant described his job duties and stated that about 85 percent of his job required over the head reaching. He also noted that in 1996 he had surgery on his right

shoulder as a result of an established injury and that since that surgery he had been using his left arm more for reaching, lifting and stocking merchandise.

By undated letter, appellant requested reconsideration of the prior decision. Appellant also submitted additional evidence<sup>1</sup> including a note dated June 18, 1999, in which Dr. McCluskey diagnosed a probable rotator cuff tear and acromioclavicular joint arthrosis on the left; treatment notes dated July 7 and August 18, 1999, in which he noted magnetic resonance imaging findings of partial tear of the cuff with severe tendinitis; a treatment note dated August 27, 1999 from Dr. McCluskey; hospital records dated August 25, 27 and September 2, 1999, pertaining to appellant's left shoulder arthroscopy, arthroscopic labral debridement, subacromial decompression and distal clavicle resection; and a treatment note from Dr. McCluskey dated September 9, 1999.

In a letter dated October 27, 1999, Dr. McCluskey opined that the pathological findings seen at the time of appellant's surgery generally occur from repetitive use of the arm for reaching, pushing, pulling and everyday activities and that the type of work performed by appellant for the prior 15 years would predispose someone to develop the degenerative changes such as those that appellant had at the time of surgery. He also noted that he could not say beyond a reasonable degree of medical certainty that a specific work-related event was the sole cause of appellant's shoulder pain or pathological finding.

By decision dated February 29, 2000, the Office modified the prior decision to accept that fact of injury has been established, but still found that the evidence submitted was insufficient to establish causal relationship.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim<sup>3</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>4</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>5</sup> that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>6</sup> These are

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<sup>1</sup> It is noted that the medical evidence submitted by appellant was stamped received by the Office on October 12, 1999.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.115.

<sup>4</sup> See *James A. Lynch*, 32 ECAB 2116 (1980); see also 5 U.S.C. § 8101(1).

<sup>5</sup> 5 U.S.C. § 8122.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>8</sup>

Causal relationship is a medical issue<sup>9</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

In this case, the Board finds that the October 27, 1999 report of Dr. McCluskey constitutes sufficient evidence in support of appellant's claim to require further development by the Office. He opined:

"These pathological findings seen at [appellant's] procedure generally occur from repetitive use of the arm for reaching, pushing, pulling, lifting and everyday activities. The type of work that [appellant] has done for the last 15 years or more would predispose someone to developing degenerative changes such as found at the time of surgery regarding the rotator cuff and the subacromial space and the acromioclavicular joint. I cannot say beyond a reasonable degree of medical certainty that a specific work-related event was the sole etiology of his shoulder pain or pathologic finding."

While Dr. McCluskey's report lacks detailed medical rationale to meet appellant's burden of proof to establish that his left shoulder condition was caused or aggravated by employment factors, this does not mean that this report may be completely disregarded by the

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<sup>7</sup> *Delores C. Ellyett*, 41 ECAB 922 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Victor J. Woodhams*, *supra* note 7.

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *Victor J. Woodhams*, *supra* note 7; *Thomas L. Hogan*, 47 ECAB 323 (1996); *Kurt R. Ellis*, 47 ECAB 505 (1996); *Alberta S. Williamson*, 47 ECAB 569 (1996); *Joe L. Wilkerson*, 47 ECAB 604 (1996); *Charles E. Burke*, 47 ECAB 185 (1995).

Office. It merely means that its probative value is diminished.<sup>11</sup> Absent medical evidence to the contrary, the report is insufficient to require further development of the record.<sup>12</sup>

It is well established that proceedings under the Act are not adversarial in nature.<sup>13</sup> While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>14</sup>

On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's left shoulder and employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated February 29, 2000 is hereby set aside and this case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC  
March 26, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> See *Delores C. Ellyett*, *supra* note 7.

<sup>12</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

<sup>14</sup> See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).